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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
APR 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 4(g)
of the Cable Television
Consumer Protection Act of 1992

Home Shopping Station Issues

MM Docket No. 93-8

To: The Commission

REQUEST FOR EXPEDITED ACTION

Silver King Communications, Inc. ["SKC"]^{1/}, by its attorneys, and pursuant to Section 1.41 of the Commission's Rules, hereby respectfully requests that the Commission take expedited action in the above-captioned proceeding. As demonstrated herein, any delay in deciding the issues in this proceeding will have a substantial, adverse impact on home shopping stations' entitlement to must-carry rights in contravention of statutory requirements and public interest concerns. These circumstances compel expedited action.

Background

The Commission initiated this proceeding pursuant to Section 4 of the Cable Television Consumer Protection and Competition Act of 1992^{2/} which added Section 614(g) to the Communications Act of 1934, as amended ["Section

1/ SKC is the parent of the licensees of 12 television stations, all of which carry the programming of the Home Shopping Club. SKC submitted Comments in this proceeding on March 29, 1993, and contemporaneously with this Request, is submitting Reply Comments.

2/ Pub. L. No. 102-385, 106 Stat. 1460 (1992) ["1992 Cable Act"]

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4(g)"]. Section 4(g) requires the Commission to determine whether home shopping stations are serving the public interest, convenience and necessity as a prerequisite to their qualification as local commercial television stations entitled to mandatory cable carriage rights under the 1992 Cable Act.

On January 28, 1993, the Commission issued its Notice of Proposed Rulemaking^{3/} in this proceeding, establishing March 29, 1993, as the due date for comments and April 13, 1993, as the deadline for filing reply comments. However, the reply comment date was extended to April 27, 1993, at the request of the Center for the Study of Commercialism ["CSC"].^{4/}

**Any Delay in this Proceeding Will Prejudice Home Shopping Stations'
Exercise of Mandatory Cable Carriage Rights**

Although the Act does not require the Commission to conclude this proceeding until July 2, 1993, the timetable the Commission has adopted for must-carry implementation compels a Commission decision on home shopping stations well before July 2. If the Commission finds that home shopping stations are operating in the public interest (and SKC is confident that it will do so), the 1992 Cable Act requires the Commission to qualify these stations as local commercial television stations for the purposes of mandatory cable carriage.^{5/} On March 29,

3/ MM Docket No. 93-8, 8 FCC Rcd 660 (1993) ["Notice"].

4/ See Order, MM Docket No. 93-8, DA 93-419 (Apr. 8, 1993). SKC opposed CSC's request for an extension of time to file reply comments because any extension would adversely affect home shopping stations' entitlement to must-carry status. The Commission's Order did not significantly address SKC's objections.

5/ Notice, 8 FCC Rcd at 660.

1993, the Commission released its Report and Order implementing the 1992 Cable Act's must-carry provisions.^{6/} Under the rules adopted in that proceeding, "cable operators [are] . . . required to begin carriage of their complement of commercial must-carry signals no later than June 2, 1993."^{7/} As a practical matter, if home shopping stations are to be fairly included in the pool of must-carry stations, as contemplated by the statute, the Commission must make its decision in this proceeding well before June 2, 1993. Otherwise, must-carry eligibility for television stations having home shopping formats would be an empty right.

Congress clearly contemplated that the Commission could complete this proceeding before July 2, 1993.^{8/} Indeed, Congress directed that, once the FCC made its determination herein, "those stations which [the FCC] decides serve the public interest will be promptly certified as local commercial television stations and will be treated the same as other local commercial television stations under the mandatory must carry provisions of the act."^{9/} However, if the Commission does not decide the instant proceeding well before June 2, 1993, it is unlikely that home shopping stations "will be treated the same as other local commercial television stations." Many cable operators will have already filled

6/ See Report and Order, MM Docket No. 92-259, FCC 93-144 (Mar. 29, 1993).

7/ Id. ¶ 27 (emphasis added).

8/ 138 Cong. Rec. H8683 (Sept. 17, 1992) (Remarks of Congressmen Lent and Markey).

9/ Id.

their complement of must-carry signals by June 2. Moreover, home shopping stations will, as a practical matter, be excluded from the pool of qualified local must-carry signals for at least six months, if not longer, because cable systems may not delete or reposition stations during a sweeps period,^{10/} and there is a sweep period in July. Additionally, 30 days' notice must precede station deletion or repositioning.^{11/} Retransmission consent agreements should be completed by mid-August which will further finalize channel carriage and positioning.

In sum, a Commission decision after June 2, 1993 would effectively bar many, if not all, home shopping stations from exercising their rights to mandatory carriage. Such a result would be unfair in the extreme, is clearly unsupported by congressional intent and would be in direct contravention of Section 4(g)'s requirements and the public interest.^{12/}

Conclusion

It is essential that the Commission take expeditious action in this proceeding. The must-carry implementation date is a little over one month away. This proceeding has already been delayed two weeks, and any further delay will effectively moot a determination by the Commission that home shopping stations are entitled to must-carry rights because cable operators may have already filled

^{10/} 47 C.F.R. § 76.58(a), Note (1993).

^{11/} *Id.* § 76.58(a).

^{12/} Congress' purpose in enacting must-carry was to ensure television broadcast stations' continued access to local audiences. *See, e.g.*, 1992 Cable Act § 2(a)(11). Any delay in the FCC's decision on home shopping stations' entitlement to must-carry will substantially impair these stations' abilities to provide continuing service to their local audiences.

their complement of must-carry signals by the time the Commission reaches a decision. The failure of the Commission to act expeditiously will cause home shopping stations to be denied the same must-carry rights to which all other commercial television stations are entitled -- a result that is clearly inconsistent with statutory requirements, congressional intent and the public interest. SKC therefore respectfully urges the Commission to take expedited action in this proceeding.

Respectfully submitted,

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April 27, 1993